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09/678,430	10/02/2000	Chris Greener	61375-10	4360

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SEATTLE, WA 98101-1688

EXAMINER
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KINDRED, ALFORD W

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**APR 05 2007**

**Technology Center 2100**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/678,430  
Filing Date: October 02, 2000  
Appellant(s): GREENER ET AL.

MARKETTOOLS, INC.  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 12/21/06 appealing from the Office action mailed 5/22/06.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

200220128898	Smith, JR. et al.	9/2002
20040169675	Beck et al.	6/2004

20010052009

DESAI et al.

12/2001

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 33-40 and 42-46 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith, JR. et al., US# 2002/0128898 A1, in view of Beck et al., US# 2004/0169675 A1.

As per claim 33, Smith, JR. et al. teaches "a database interface configured to access the database . . ." (see page 3, paragraphs and [0047]) "a survey creation engine configured to create surveys . . ." (see page 3, paragraph [0043]) "allow a user of the survey creation machine to create a survey . . ." (see page 4, paragraphs [0052]-[0053]) "an e-mail list management facility configured to provided management capability through the network browser of the survey design machine of a list of e-mail . . ." (see paragraphs [0108]-[0110]). Smith, Jr. et al. does not teach "the e-mail containing a network link to provide access to the survey for the client computer via network protocols . . .". Beck et al. et al. teaches "the e-mail containing a network link to provide access to the survey for the client computer via network protocols . . ." (see paragraphs [[0118] and [0387], whereas Beck's e-mail link capabilities, in regards to

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survey data, reads on applicant's claim language). It would have obvious at the time of the invention for one of ordinary skill in the art to have combined the teachings of Smith and Beck, because using the steps of "the e-mail containing a network link to provide access to the survey for the client computer via network protocols . . ." would have given those skilled in the art the tools to provide survey data in the form of e-mail over a network. This give users the advantage of processing survey data faster.

As per claim 34, Smith, JR. et al. teaches "interfaces of the host machine and the survey design machine are configured to access the Internet" (see page 4, lines [0057]-[0058]).

As per claims 35-37, Smith, JR. et al. teaches "a sever process configured to send a created survey . . . than mail protocols . . ." (see page 3, paragraphs [0046]-[0048]).

As per claims 38-39, Smith, JR. et al. teaches "the server process of the host machine is further configured to provide access to response stored in the database for the network browser of the survey design machine" (see page 6, paragraphs, [0098], and [0107]-[0111]).

As per claim 40, Smith, JR. et al. teaches "a survey report machine configured to download the response stored in the database into a spreadsheet program" (see paragraph [0131]-[0132]).

As per claim 42, Smith, JR. et al. teaches "the network link of the e-mail is a universal resource locator (URL)" (see page 9, paragraph [0143]).

As per claim 43, Smith, JR. et al. teaches "the host is configured to store web content objects associated with the stored surveys" (see page 9, paragraphs [0137]-[0141]).

As per claim 44, Smith, JR. et al. teaches "the database is configured to provide password protected access to stored surveys and responses to surveys" (see page 8, paragraphs [0128]-[0130]).

As per claim 45, Smith, JR. et al. teaches "created engine includes a wizard process configured to provide automated guidance in survey creation" (see page 8, paragraphs [0125]).

As per claim 46, Smith, JR. et al. teaches "survey creation engine includes templates of exemplary surveys and is configured to provide to the network browser of the survey design machine at least one function configured to provide modification capability for tailoring of the exemplary surveys to match requirements of intended surveys" (see page 12, paragraphs [0176]-[0177]).

As per claim 56, this claim is rejected on grounds corresponding to the arguments given above for rejected claim 46 and is similarly rejected.

4. Claims 47-55 and 57-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith, JR. et al., US# 2002/0128898 A1, in view of Beck, US# 20040169675 A1, and further in view of DESAI et al., US# 2001/0052009 A1.

As per claim 47, this claim is rejected on grounds corresponding to the arguments given above for rejected claim 33 and is similarly rejected including the

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following: Smith, JR. et al. does not explicitly teach "the network to edit a list of e-mail recipients stored . . .". DESAI et al. teaches "the network to edit a list of e-mail recipients stored . . ." (see paragraphs [0033]-[0035]). It would have been obvious at the time of the invention for one of ordinary skill in the art the tools to efficiently edit email list for surveying purposes. This give users the advantage for rendering modified survey lists from recipients faster.

As per claim 48, this claim is rejected on grounds corresponding to the arguments given above for rejected claim 41 and is similarly rejected.

As per claim 49, this claim is rejected on grounds corresponding to the arguments given above for rejected claim 46 and is similarly rejected.

As per claim 50, this claim is rejected on grounds corresponding to the arguments given above for rejected claim 45 and is similarly rejected.

As per claim 51, this claim is rejected on grounds corresponding to the arguments given above for rejected claims 33 and 35 and is similarly rejected.

As per claims 52-55, these claims re rejected on grounds corresponding to the arguments given above for rejected claims 33 and 47 and are similarly rejected.

As per claims 57-58, these claims are rejected on grounds corresponding to the arguments given above for rejected claims 33 and 47 and are similarly rejected including the following:

- Smith, JR. et al. teaches "progress bars to be added by the survey creation engine" (see paragraph [0110], whereas Smith's gathering of results indicates

a progress element in regards to surveying as indicated in applicant's claim language).

fig. 8—sheet 9 of 11 and see paragraphs [0097]-[0098]).

As per claims 59-60, these claims are rejected on grounds corresponding to the arguments given above for rejected claims 33 and 47 and are similarly rejected including the following:

--Smith, JR et al. teaches "select font of text . . . color . . ." (see fig. 3—sheet 4 of 11]).

#### **(10) Response to Argument**

As per applicant's argument regarding "Smith and /or Beck alone or in combination do not teach or suggest . . . a survey creation engine configured to create surveys, a survey design machine configured to communicate with the survey creation engine . . . to create a survey . . . and an e-mail list management facility . . . a list of e-mail recipients . . .", examiner disagrees and maintains that Smith in view Beck teachings reads on applicant's claim language. Smith's teachings, (i.e. paragraph [0052] and [0057]), in particular, the use a survey conductor server 254, as well as Survey builder 294 reads on applicant's teachings above. Smith's survey conductor server provides the means for the creation and management of surveys electronically in a manner synonymous to applicant's teachings of a survey creation engine and thus the teachings of both applicant's claim language and Smith are equivalent. Smith's Survey builder defines an interface that is used to create various types of survey designs as illustrated in applicant's claim language regarding a survey design machine. Smith's



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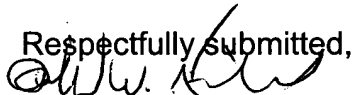
teachings in (paragraph [0110]), whereas the e-mail message is sent via an attachment to the e-mail addressee, reads on applicant's e-mail list management element. Further Beck's teachings of surveys via emails, reads on applicant's claim language regarding e-mail containing a network link.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,

  
Alford W. Kindred

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